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Attorneys for Plaintiffs  
HAWAII ELECTRICIANS TRUST FUNDS

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

HAWAII ELECTRICIANS	)	CIVIL NO. 17-00169 ACK-KSC
ANNUITY FUND, by its Trustees,	)	
Ronald Yee, Robert Hanamoto, Jody	)	
Hanamoto, Tracy Hayashi, Damien T.	)	FINDINGS AND
K. Kim, Leyton Torda; HAWAII	)	RECOMMENDATION TO GRANT
ELECTRICIANS HEALTH AND	)	PLAINTIFFS' MOTION FOR
WELFARE FUND, by its Trustees,	)	DEFAULT JUDGMENT AGAINST
Rodney Chun, Daryl Suehiro, Jody	)	DEFENDANTS LEWIS ELECTRIC
Hanamoto, Tracy Hayashi, Damien T.	)	LLC AND LEE B. LEWIS
K. Kim, Leyton Torda; HAWAII	)	
ELECTRICIANS PENSION FUND,	)	
by its Trustees, Ronald Yee, Randall	)	<u>Hearing:</u>
Nishimura, Steve Watanabe, Tracy	)	Date: September 13, 2017
Hayashi, Damien T. K. Kim, Leyton	)	Time: 9:30 a.m.
Torda; HAWAII ELECTRICIANS	)	Judge: Honorable Kevin S. C. Chang
TRAINING FUND, by its Trustees,	)	
Daryl Suehiro, Stephen Duarte, Phillip	)	
Chico Lucero, Tracy Hayashi, Damien	)	
T. K. Kim, Dennis Kaloi; HAWAII	)	(Caption continued on the next page)
ELECTRICIANS	)	
SUPPLEMENTARY	)	
UNEMPLOYMENT BENEFITS	)	

FUND, by its Trustees, Steve	)
Watanabe, Robert Hanamoto, Jody	)
Hanamoto, Dennis Kaloi, Damien T.	)
K. Kim, Leyton Torda; HAWAII	)
ELECTRICIANS VACATION AND	)
HOLIDAY FUND, by its Trustees,	)
Steve Watanabe, Robert Hanamoto,	)
Jody Hanamoto, Tracy Hayashi,	)
Damien T. K. Kim, Leyton Torda;	)
HAWAII ELECTRICIANS	)
PREPAID LEGAL FUND, by its	)
Trustees, Steven Tanaka, Rodney	)
Chun, Jody Hanamoto, Tracy	)
Hayashi, Damien T. K. Kim, Dennis	)
Kaloi; HAWAII ELECTRICIANS	)
MARKET ENHANCEMENT	)
PROGRAM FUND, by its Trustees,	)
Daryl Suehiro, Robert Hanamoto,	)
Jody Hanamoto, Stephen Duarte,	)
Damien T. K. Kim, Robert Aquino,	)
Brian Lee,	)
	)
Plaintiffs,	)
	)
vs.	)
	)
LEWIS ELECTRIC LLC; LEE B.	)
LEWIS; JOHN DOES 1-10; JANE	)
DOES 1-10; DOE CORPORATIONS	)
1-10; DOE PARTNERSHIPS 1-10;	)
DOE GOVERNMENTAL	)
AGENCIES 1-10, DOE TRUSTS 1-	)
10,	)
	)
Defendants.	)

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FINDINGS AND RECOMMENDATION TO GRANT PLAINTIFFS' MOTION  
FOR DEFAULT JUDGMENT AGAINST  
DEFENDANTS LEWIS ELECTRIC LLC AND LEE B. LEWIS

Before the Court is Plaintiffs TRUSTEES of the HAWAII ELECTRICIANS ANNUITY FUND, HAWAII ELECTRICIANS HEALTH AND WELFARE FUND, HAWAII ELECTRICIANS PENSION FUND, HAWAII ELECTRICIANS TRAINING FUND, HAWAII ELECTRICIANS SUPPLEMENTARY UNEMPLOYMENT BENEFITS FUND, HAWAII ELECTRICIANS VACATION AND HOLIDAY FUND, HAWAII ELECTRICIANS PREPAID LEGAL FUND, and HAWAII ELECTRICIANS MARKET ENHANCEMENT PROGRAM FUND (hereinafter collectively referred to as “Plaintiffs”), Motion for Entry of Default Judgment Against Defendants Lewis Electric LLC and Lee B. Lewis. (Doc. 14.) Plaintiffs request that default judgment be entered pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure for delinquent contributions owed to the Trust Funds, liquidated damages, and attorneys’ fees and costs. (Doc. 14.)

This matter came on for hearing on September 13, 2017. (Doc. 17.) Appearing on behalf of Plaintiffs Hawaii Electricians Trust Funds was Christin D. W. Kawada. Defendants Lewis Electric LLC and Lee B. Lewis did not make an appearance or otherwise defend against Plaintiff’s Motion. The court, having taken judicial notice of Defendants’ default, considering no opposition by Defendants, and after careful consideration of the Motion, declarations, exhibits, and the record herein, finds and recommends that the Motion be GRANTED. As

discussed more thoroughly below, this court recommends that judgment be in favor of Plaintiff in the amount of \$57,246.43.

### **BACKGROUND**

On April 13, 2017, Plaintiffs filed a Complaint seeking judgment for outstanding trust fund contributions and damages against Defendants alleging that Defendant LEWIS ELECTRIC LLC (“LEWIS ELECTRIC LLC”) materially breached the collective bargaining agreements and various Trust Agreements created thereunder (collectively, the “Bargaining Agreement”). Plaintiffs claimed that Defendant LEWIS ELECTRIC LLC failed to submit monthly contribution reports and full payments due on said reports pursuant to the terms of the Bargaining Agreement, notwithstanding demand by Plaintiffs.

Plaintiffs allege Defendant LEE B. LEWIS (“LEE B. LEWIS”) should be held liable for all judgments entered against Defendant LEWIS ELECTRIC LLC because he was a member or officer of Defendant LEWIS ELECTRIC LLC and the alter ego and/or mere instrumentality of Defendant LEWIS ELECTRIC LLC. Additionally, Plaintiffs assert a claim for breach of fiduciary duty against Defendant LEE B. LEWIS, alleging that he is a fiduciary under ERISA because he exercised authority or control respecting management or disposition of plan assets. Plaintiffs allege that Defendant LEE B. LEWIS breached his fiduciary duties by intentionally failing to report and/or pay the required contributions. Plaintiffs ask

for a monetary award against Defendants and the imposition of a constructive trust on the assets of Defendants.

The action arises under the Labor-Management Relations Act, 1947, as amended, the Employee Retirement Income Security Act of 1974, and the Multiemployer Pension Plan Amendments Act of 1980. Jurisdiction is founded on questions arising thereunder and more specifically under 29 U.S.C. §§ 1145 and 1132(a) and (f).

On April 19, 2017, service of process of the Complaint was made on Defendant LEWIS ELECTRIC LLC's registered agent, the Corporation Company, as evidenced by the Proof of Service filed on May 4, 2017.

On April 27, 2017, service of process of the Complaint was made on Defendant LEE B. LEWIS, as evidenced by the Proof of Service filed on May 4, 2017.

On May 11, 2017, Plaintiffs filed Plaintiffs' Request for Entry of Default Against Defendants LEWIS ELECTRIC LLC. On May 12, 2017, default was entered against Defendant for its failure to plead or otherwise defend itself as required by law.

On June 7, 2017, Plaintiffs filed Plaintiffs' Request for Entry of Default Against Defendants LEE B. LEWIS. On June 8, 2017, default was entered against Defendant for its failure to plead or otherwise defend itself as required by law.

On July 25, 2017, Plaintiffs filed a Motion for Entry of Default Judgment (“Motion”) seeking an award of the sum of \$58,050.29, representing contribution amounts of \$50,073.86, liquidated damages of \$4,993.10, and attorneys’ fees and costs of \$2,983.33 (consisting of fees: \$2,341.50, general excise tax: \$62.95, and costs: \$578.88).

Plaintiffs’ Motion for Entry of Default Judgment was accompanied by the Declaration of Travis Umemoto in support of the damages sought by Plaintiffs. The Declaration of Christin D. W. Kawada also accompanied the Motion for Entry of Default Judgment in support of attorneys’ fees and costs.

The Motion was heard on September 13, 2017 with an appearance by Christin D. W. Kawada on behalf of Plaintiffs, and no other party making an appearance.

### **DISCUSSION**

Having reviewed the Motion, the declarations, exhibits, and the record established in this action, the Court finds and concludes as follows:

1. On August 21, 2016, LEWIS ELECTRIC LLC executed a Letter of Assent for two collective bargaining agreements known as the Inside Agreement and Outside Agreement, executed by and between Local Union No. 1186 of the International Brotherhood of Electrical Workers (IBEW), AFL-CIO (“Union”) and the Electrical Contractors Association of Hawaii (“ECAH”) (collectively

hereinafter referred to as the “Bargaining Agreement”), thereby agreeing to all the terms and conditions of the Bargaining Agreement and the Trust Agreements for the trust funds as incorporated by reference. The Trust Funds are a third party beneficiary of the Bargaining Agreement.

2. Each of the Trust Funds was and is an express trust created by a written trust agreement subject and pursuant to 29 U.S.C. § 186 and a multiemployer plan within the meaning of 29 U.S.C. § 1002 and 1003.

3. Pursuant to the Bargaining Agreement, Defendant LEWIS ELECTRIC LLC must contribute to the Trust Funds by the 1<sup>st</sup> day of the succeeding work month sums of money to be held in trust by Plaintiffs as employee benefits for LEWIS ELECTRIC LLC’s employees.

4. Under the Bargaining Agreement, Defendant LEWIS ELECTRIC LLC promised that if any contributions were past due, LEWIS ELECTRIC LLC would pay liquidated damages in the amount of 10% of the delinquent contributions due to each respective fund or \$20.00, whichever is greater, for each and every month that such contributions are delinquent.

5. Also under the Bargaining Agreement, Defendant LEWIS ELECTRIC LLC promised that if the Trust Funds brought legal action to enforce the Bargaining Agreement against LEWIS ELECTRIC LLC, LEWIS ELECTRIC LLC would pay for all court costs and reasonable attorneys’ fees of 25% of the total

amount of contributions and damages due.

6. Defendant LEWIS ELECTRIC LLC breached the Bargaining Agreement and is liable to the Plaintiffs by its continuous failure to perform the terms of the Agreements, including: 1) failure to pay the full amounts of contributions found by the Plaintiffs for the period of August 2016, January 2017, February 2017, March 2017 and May 2017; 2) failure to pay the Plaintiffs additional liquidated damages on late paid report contributions; and 3) failure to pay the Plaintiffs their reasonable attorneys' fees and costs incurred in enforcing the terms of the Bargaining Agreement.

7. Defendant LEE B. LEWIS was the alter ego and/or mere instrumentality of Defendant LEWIS ELECTRIC LLC, and as such, Defendant LEE B. LEWIS is liable for all judgments entered into against Defendant LEWIS ELECTRIC LLC.

8. Defendant LEE B. LEWIS is a fiduciary under ERISA because he exercised authority or control respecting management or disposition of plan assets.

9. Defendant LEE B. LEWIS breached his fiduciary duty by intentionally failing to report and/or pay the required contributions, and as such, Defendant LEE B. LEWIS is liable for all judgments entered into against Defendant LEWIS ELECTRIC LLC.

10. Defendants have not sought to set aside the default in this action.



11. The billing rates for attorneys are 1) partners (Jared N. Kawashima) \$250.00 and 2) associates (Christin D. W. Kawada) \$185.00. The billing rate for paralegals is \$95.00.

12. The Court finds that \$1,610.45 for Plaintiffs' legal fees performing work on this matter are reasonable, and that general excise tax at the rate of 4.712% on those fees totaling \$75.88 are reasonable.

13. The Court finds that the total costs in the amount of \$569.02 are reasonable.

14. The Court finds that the liquidated damages sought by the Plaintiffs of \$4,993.10 are reasonable.

15. Thus, there is known to be due, owing and unpaid to the Plaintiffs from Defendants:

1. Contributions (August 2016, January 2017, February 2017, March 2017 and May 2017).....	\$50,073.86
2. Liquidated Damages.....	\$ 4,993.10
3. Legal Fees .....	\$ 1,610.45
4. General Excise Tax.....	\$ 75.88
5. Costs .....	\$ 569.02
TOTAL .....	\$57,322.31

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED that Default Judgment be granted in favor of TRUSTEES of the HAWAII ELECTRICIANS ANNUITY FUND, HAWAII ELECTRICIANS HEALTH AND WELFARE FUND, HAWAII

ELECTRICIANS PENSION FUND, HAWAII ELECTRICIANS TRAINING FUND, HAWAII ELECTRICIANS SUPPLEMENTARY UNEMPLOYMENT BENEFITS FUND, HAWAII ELECTRICIANS VACATION AND HOLIDAY FUND, HAWAII ELECTRICIANS PREPAID LEGAL FUND, and HAWAII ELECTRICIANS MARKET ENHANCEMENT PROGRAM FUND for a money judgment including contribution amounts, attorneys' fees, general excise tax, and costs, against Defendants LEWIS ELECTRIC LLC and LEE B. LEWIS in the amount of \$57,322.31.

IT IS FOUND AND SO RECOMMENDED.

DATED: Honolulu, Hawaii, November 21, 2017.



  
Kevin S.C. Chang  
United States Magistrate Judge

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HAWAII ELECTRICIANS ANNUITY FUND, by its Trustees, Ronald Yee, Robert Hanamoto, Jody Hanamoto, Tracy Hayashi, Damien T. K. Kim, Leyton Torda, et al. v. Lewis Electric LLC, et al., United States District Court, District of Hawaii, CIVIL NO. 17-00169 ACK-KSC; *FINDINGS AND RECOMMENDATION TO GRANT PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT AGAINST DEFENDANTS LEWIS ELECTRIC LLC AND LEE B. LEWIS*